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Kirk D. Houser
Eckert Seamans Cherin & Mellott, LLC
44th Floor
600 Grant Street
Pittsburgh, PA 15219

EXAMINER

VIG, NARESH

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/698,502
Filing Date: October 27, 2000
Appellant(s): MENENDEZ ET AL.

Kirk D. Houser (Registration No. 37,357)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07 February 2005 appealing from the Office action mailed 03 November 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,389,773

COUTTS et al.

02-1995

- Information on Hertz Corporation (1997 - 2000), archived web pages printed through www.archive.org
- Information on Avis Rent A Car (March 03, 2000)
- Dollar Rent A Car Introduces DOLLAR (R) TRAVEL CENTER At Key Airport Locations, Customers Obtain Free Travel Information At Interactive Kiosks (May 14, 2000)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 – 18 are unpatentable under 35 U.S.C. 103 (a). This rejection is set forth in a prior Office Action, mailed on 11 May 2004.

Claims 1 – 5, 10 – 12, 14 – 16 and 18 are unpatentable under 35 U.S.C. 103(a) over Hertz Corporation hereinafter known as Hertz in view of Avis Rent A Car System, Inc. hereinafter known as Avis.

Regarding claim 1, Appellant has not described rental agreement. Examiner reads rental agreement as an arrangement between parties regarding a course of action; a covenant. Hertz discloses interactive rates and reservation system. Hertz discloses that now you (user) can check the latest Hertz rates and instantly make, modify (user can retrieve previously stored reservation to make modification), or, cancel (user can retrieve previously stored reservation to cancel) reservation on-line [page 17].

Hertz discloses entering reservation-related information and rental-related information for an item [page 62] without employing a master rental agreement [Page 66].

Hertz discloses providing a reservation for item based upon reservation-related information [Page 67 - 68].

Hertz discloses creating and displaying a rental proposal based upon reservation and said rental-related information [page 67 – 68].

Hertz discloses electronically accepting said rental proposal [page 68].

Hertz does not disclose storing the electronic rental agreement based upon said accepted rental proposal. However, Hertz discloses that customers can modify or cancel reservations [pages 17]. Hertz requires customer name and confirmation number to retrieve the reservation information. Official notice is taken that it would have been obvious to one of ordinary skill in the art at the time the invention was made that Hertz system and method stores the reservation information to retrieve it at a later time to allow customer to make modifications or cancel the reservation. Avis discloses storing rental information. Avis disclose to retrieve rental information base upon the reservation

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number [page 13]. Therefore, it is would have been obvious at the time of invention was made to one of ordinary skill in the art to modify Hertz as taught by Avis and store information for retrieval at a later time to reduce reservation personnel cost by automating the reservation cancellation and modification process.

Regarding claim 2, Hertz discloses entering rental-related information without employing a master rental agreement [pages 62 and 67].

Regarding claim 3, Hertz discloses manually entering rental-related information online [pages 18 – 21, 62].

Regarding claim 4, Hertz discloses you can use some or all of the information contained in your rental profile (entering at least some of rental-related information from a master rental agreement) [page 17].

Hertz discloses allowing customers to modify information from the master rental agreement for rental without modifying the master rental agreement [pages 17, 21].

Regarding claim 5, Hertz discloses entering at least one of a member identification and a user name to identify master rental agreement [page 21].

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Regarding claim 10, Hertz discloses sending a message to a Hertz file system responsive to said accepting step to indicate that a user has accepted said rental proposal ["Reserve" on page 68].

Regarding claim 11, Hertz discloses storing a unique transaction in the database system for said accepted rental proposal (Hertz teaches capability of retrieving reservation information from their system. It is inherent / obvious that Hertz stores the reservation information on a memory / file system in their system for later retrieval) [page 22].

Regarding claim 12, appellant acknowledges that at the client system 26, the customer clicks on an "I accept" button on a web page, which, in turn, is stored by the mainframe 66 as an electronic signature. Hertz discloses "Reserve" button on web page. It is inherent / obvious that Hertz stores a flag along with unique transaction in the database system that the accepted rental proposal is electronically signed (Hertz asks customers to secure the reservation using a credit card, and, asks the customers to cancel the reservation if they do not need it, i.e. customer has rented the vehicle unless it is cancelled by the customer [page 67, 68].

Regarding claim 14, Hertz discloses:

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Employing rental options (car type and class) in rental related information [page 24]. Also, Hertz discloses to offer optional options like insurance coverage to customers [page 67].

Accepting or declining at least some of rental options [page 66].

Storing plurality of flags corresponding to rental options to signify rental options that a user has accepted or declined (user can accept or decline options by clicking on the selection button (flags) [page 66], and, rental information can be retrieved by the customer at a later time)

Regarding claim 15, Hertz discloses:

Retrieving the stored flags (customers can retrieve their reservation to make changes) [page 22].

Determining whether the user accepted or declined rental options based upon the retrieved stored flags (it is inherent / obvious that Hertz determines what options user has selected to allow users to make changes to their reservations) [page 22].

Regarding claim 16, Hertz discloses electronically accepting rental proposal at a client system [pages 67 – 68].

Regarding claim 18, Appellant has not described rental agreement. Examiner reads rental agreement as an arrangement between parties regarding a course of action; a covenant. Hertz discloses completing and storing the electronic rental

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agreement based upon the accepted rental proposal without completing a handwritten rental agreement (see item 14 on page 33, customer confirms any penalties associated with reservation).

Claims 6 – 9 are unpatentable under 35 U.S.C. 103(a) over Hertz Corporation hereinafter known as Hertz in view of Avis Rent A Car System, Inc. hereinafter known as Avis and further in view of Coutts et al. US Patent 5,389,773 hereinafter known as Coutts.

Regarding claim 6, Hertz discloses:

Entering information for an identification of a user [page 21]. (Hertz discloses to maintain information on user, and Hertz discloses that the information stored on the system can be for making reservations [page 17]).

Hertz in view of Avis does not disclose to maintain history of rental information (information related to information offered by appellant) from prior rentals by a customer (customer's past transactions on the system). However, Coutts discloses a self-service system (customer making transaction directly with the system). Coutts teaches storing record in the system, representing previous transactions by that user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hertz in view on Avis as taught by Coutts to use the historical data for predicting customer requirements.

Hertz in view of Avis does not disclose entering at least some of rental-related information from the history based upon information from an identification of a user without employing a master rental agreement. However, Hertz teaches customers can use some or all information contained in customers rental profile. Coutts teaches entering at least some of rental-related information from the history based upon information from an identification of a user without employing a master rental agreement (employs a technique in which aspects of each user's previous behaviour and requirements in self-service transactions are recorded and are then used to predict what that user's probable requirements will be in future transactions). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hertz in view of Avis as taught by Coutts to increase the speed of operation in carrying out the rental reservation transaction.

Regarding claim 7, Hertz discloses employing a driver's license as said identification of a user (renters must possess a valid driver's license and be subject to driver's license verification) [page 9].

Regarding claim 8, appellant has not disclosed "provisionally". Examiner reads provisionally as information on a form or display which can be modified by the customer. Hertz discloses:

Entering information for an identification of a user [page 21]. (Hertz discloses to maintain information on user, and Hertz discloses that the information stored on the system can be for making reservations [page 17]).

Hertz does not disclose to maintain history of rental information (information related to information offered by appellant) from prior rentals by a customer (customer's past transactions on the system). However, Coutts discloses a self-service system (customer making transaction directly with the system). Coutts teaches storing record in the system, representing previous transactions by that user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hertz in view on Avis as taught by Coutts to use the historical data for predicting customer requirements.

Hertz in view of Avis does not disclose provisionally entering at least some of rental-related information from the history based upon information from an identification of a user without employing a master rental agreement. However, Hertz teaches customers can use some or all information contained in customers rental profile [page 17], and also, customer can make changes to reservations [page 22]. Coutts teaches entering at least some of rental-related information from the history based upon information from an identification of a user without employing a master rental agreement (employs a technique in which aspects of each user's previous behaviour and requirements in self-service transactions are recorded and are then used to predict what that user's probable requirements will be in future transactions). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made

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to modify Hertz in view of Avis as taught by Coutts to increase the speed of operation in carrying out the rental reservation transaction.

Regarding claim 9, Hertz teaches that customer make modify at least some of said provisionally entered at least some of said rental-related information from the history (customer can make changes to the reservation [page 22].

Claims 13 and 17 are unpatentable under 35 U.S.C. 103(a) over Hertz Corporation hereinafter known as Hertz in view of Avis Rent A Car System, Inc. hereinafter known as Avis and further in view of an article "Dollar Rent A Car Introduces DOLLAR® TRAVEL CENTER At Key Airport Locations, Customers Obtain Free Travel Information At Interactive Kiosks" from KioskCom.com hereinafter known as KioskCom.

Regarding claim 13, Hertz does not disclose using kiosks. KioskCom discloses the Dollar Rent A Car introduced the "DOLLAR® TRAVEL CENTER," an interactive kiosk providing helpful travel information for its customers at Atlanta, Ft. Lauderdale, Miami, Las Vegas and Los Angeles airports. The kiosks are conveniently located at the DOLLAR pickup and return areas at each airport. By touch, customers can make air, hotel and DOLLAR car rental reservations; obtain U.S. weather forecasts, driving directions and event information; access personal Web-based e-mail accounts, as well

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as receive free Internet access and view the top headline news of the day, all at the interactive kiosk. Therefore, it would have been obvious to a person with ordinary skill in the art to modify Hertz in view of Avis as taught by KioskCom and use kiosks to provide point of sales at locations convenient to customers.

Regarding claim 17, Hertz does not disclose using kiosks. KioskCom discloses the Dollar Rent A Car introduced the "DOLLAR® TRAVEL CENTER," an interactive kiosk providing helpful travel information for its customers at Atlanta, Ft. Lauderdale, Miami, Las Vegas and Los Angeles airports. The kiosks are conveniently located at the DOLLAR pickup and return areas at each airport. By touch, customers can make air, hotel and DOLLAR car rental reservations; obtain U.S. weather forecasts, driving directions and event information; access personal Web-based e-mail accounts, as well as receive free Internet access and view the top headline news of the day, all at the interactive kiosk. Therefore, it would have been obvious to a person with ordinary skill in the art to modify Hertz in view of Avis as taught by KioskCom and use kiosks to provide point of sales at locations convenient to customers.

(10) Response to Argument

In response to appellant's argument that The ordinary and accustomed meaning of the term "rental agreement" means the same as "rental contract" which is legally binding on parties entering into it. In the Appendix 2 – Evidence Appendix provided by the appellant on 07 February 2005, Webster Dictionary teaches that an agreement is:

"the act of agreeing or coming to a mutual agreement"

"the state of agreeing or being in accord"

"an arrangement (as between two or more parties) as to a course of action"

"the written instrument that is the evidence of an agreement"

Appellant is arguing a contract, but, the appellant is not claiming a contract as an invention. On page 9, line 7, appellant agrees the references teach or suggest storing of electronic reservation **agreements**. Appellant arguing the meaning of "agreement" differently for the cited reference.

In response to appellant's argument that although both references teach or suggest electronically accepting a reservation proposal, and storing an electronic reservation agreement based upon an accepted reservation proposal, the references, whether taken alone or in combination, do not teach or suggest the refined recital of Claim 1. As responded to earlier, appellant is arguing a contract, but, the appellant is not claiming a contract as an invention.

In response to appellant's argument that cited references, taken as a whole, do not teach or suggest storing an electronic **rental** agreement (i.e., an electronic rental contract, which is legally binding on the parties entering into it) based upon an accepted rental proposal, which is part of Appellant's invention. As responded to earlier, appellant is arguing a contract, but, the appellant is not claiming a contract in the as an invention.

In response to appellant's argument that the exact price and the exact optional items are clearly essential, material terms ² to a rental agreement (ie., rental contract, which is legally binding on the parties entering into it). Appellant is arguing a limitation which is not claimed by the appellant.

In response to appellant's argument that cited reference Hertz teaches away from an electronic rental agreement (i. e., an electronic rental contract, which is legally binding on the parties entering into it). As responded to earlier, appellant is arguing a contract, but, the appellant is not claiming a contract as an invention.

In response to appellant's argument that references do not teach or suggest creating and displaying a rental proposal based upon reservation and rental-related information; electronically accepting such **rental** proposal; and **storing an electronic rental** agreement based upon an accepted **rental** proposal. On page 5, beginning at line 10, appellant recites reference cited teach or suggest electronically accepting a reservation proposal (it is obvious that the proposal is displayed to the customer for

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review), and storing an electronic reservation agreement based upon an accepted reservation proposal.

In response to appellant's argument that there is no teaching or suggestion in Hertz of completing and storing an electronic rental agreement (i.e., electronic rental contract which is legally binding on the parties entering into it) for a vehicle without employing a master rental agreement. Appellant is arguing a limitation of legally binding contract which is not claimed by the appellant.

In response to appellant's argument that in claim 1, cited reference Hertz also does not teach or suggest entering some rental-related information from a master rental agreement and allowing modification of information from such master rental agreement without modifying such master rental agreement. In claim 1, appellant is claiming limitation (a) or limitation (b). Examiner responded claim 1 with limitation (a). Appellant is arguing limitation (b) of the claim.

In response to appellant's argument that in the cited reference there is no teaching or suggestion of accepting a **rental** proposal, much less of electronically accepting a rental proposal, and storing an electronic rental agreement (i.e., electronic rental contract which is legally binding on the parties entering into it) based upon an accepted rental proposal. As responded to earlier, on page 5 beginning at line 10 of appeal brief, appellant acknowledges reference cited teach or suggest electronically

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accepting a reservation proposal (it is obvious that the proposal is displayed to the customer for review), and storing an electronic reservation agreement based upon an accepted reservation proposal.

In response to appellant's argument that cited reference Hertz discloses that a club member "can use some or all of the information (including the credit card number) contained in your rental profile", does not teach or suggest the refined recital of entering at least some of rental-related information from a master rental agreement. In the specification originally filed 27 October 2000, appellant teaches car rental club agreement as a master rental agreement [specification page 2, line 27].

In response to appellant's argument that Claim 12, which depends from Claim 11, recites storing a flag along with the unique transaction in the database system to indicate that the accepted rental proposal is electronically signed. In computer science, a flag is a variable or memory location that stores true-or-false, yes-or-no information. Using flag to store information is old and known design choice used in programming. Also, it is a design choice to decide for what data fields to use the flags for storing the information.

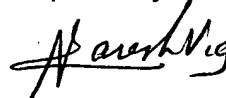
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

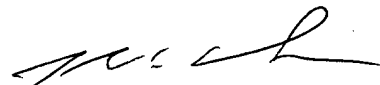
Respectfully submitted,



Naresh Vig
Examiner
Art Unit 3629

February 22, 2007

Conferees


John Weiss
Tan Dean Nguyen

JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600